

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301  
Indianapolis, IN 46204  
(317) 233-0696  
<http://www.in.gov/legislative>

**FISCAL IMPACT STATEMENT**

**LS 6031**  
**BILL NUMBER: SB 8**

**NOTE PREPARED:** Oct 31, 2002  
**BILL AMENDED:**

**SUBJECT:** Construction Practices.

**FIRST AUTHOR:** Sen. Meeks C  
**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** ☒ **GENERAL**  
☒ **DEDICATED**  
**FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** The bill changes the criminal mental state needed to commit the crime of home improvement fraud from "knowingly" to the lesser degree of "recklessly". It adds reckless failure to complete promised home improvements within 90 days after materials are delivered to the work site and reckless failure to take reasonable steps to protect exposed parts of a home improvement construction site from weather-related damage to other crimes defined as home improvement fraud. The bill simplifies the penalty structure applicable to the offense of home improvement fraud and makes certain acts of home improvement fraud a Class A misdemeanor instead of a Class B misdemeanor. The bill also moves the offense of construction deception from Title 32 of the Indiana Code to Title 35 of the Indiana Code.

**Effective Date:** July 1, 2003.

**Explanation of State Expenditures:** Under the bill, home improvement fraud, currently a Class A misdemeanor, would become a Class D felony, if the consumer is 60 years of age when the contract is made, the home improvement supplier has a prior unrelated conviction, or the home improvement contract exceeded \$10,000. Additionally, the bill adds a new Class D felony for construction deception which involves a supplier accepting payment, and, with intent to defraud, failing to notify the property owner in writing of outstanding indebtedness that results in a loss.

State expenditures could increase if an offender is incarcerated in a state prison rather than in a local jail, or if additional offenders are sentenced to prison. A Class D felony is punishable by a prison term ranging between six months to three years or reduction to Class A misdemeanor. The period of incarceration will depend upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$22,131 in FY 2000. Individual facility expenditures ranged from \$16,442 to \$40,312. (This does not

include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost per offender for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily. The average length of stay in DOC facilities for all Class D felony offenders is approximately ten months.

**Explanation of State Revenues:** More revenue to the Common School Fund could be collected if a larger criminal fine is assessed by the sentencing court, or if additional court cases occur and fines are collected. The maximum fine for a Class A misdemeanor is \$5,000, while the maximum fine for a Class D felony is \$10,000. Court fees for both misdemeanors and felonies are \$120. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

**Explanation of Local Expenditures:** In addition to the above changes, the bill would include accepting a payment equal to the cost of materials or labor for a section of home improvement contract and recklessly failing to substantially complete the work within 90 days in the offense of home improvement fraud, a Class A misdemeanor. As well, performing work that exposes the consumer's property to damage from the elements and recklessly failing to properly protect the site would be added to home improvement fraud. Under the bill, the definition of home improvement fraud would require a criminal state of mind of recklessness rather than knowingly committing the crime.

If an offender is sentenced to state prison rather than to a county jail, the costs to the county may be reduced. However, county costs for incarceration could equalize or increase, if more defendants are detained in county jails prior to their court hearings or as a result of conviction for a misdemeanor offense. The maximum term of imprisonment for a Class A misdemeanor is up to one year. The average daily cost to incarcerate a prisoner in a county jail is roughly \$44.

**Explanation of Local Revenues:** Court fees for both misdemeanors and felonies are \$120. If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

**State Agencies Affected:** Department of Correction.

**Local Agencies Affected:** Trial courts; local law enforcement agencies.

**Information Sources:** Indiana Sheriffs Association, Department of Correction.

**Fiscal Analyst:** Karen Firestone, 317-234-2106